

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE Nos 152, 158, 172,
184, 185, 240, 357 and 359 of 1993
and
INCOME TAX REFERENCE No. 24 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

TARACHAND FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 152 of 1993
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

In this group of references (except Income-tax Reference No. 240 of 1993), all at the instance of the revenue, though the questions worded are different, the controversy sought to be raised by the questions is one :

"Whether the Tribunal had rightly held that the assessee trust were to be treated as "individual" for the purposes of determining whether the assessee trust was liable to deduct tax at source and consequential proceedings like charging of interest were applicable or not ?"

In Income-tax Reference No. 240 of 1993, the following question is referred :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to allow deduction under sections 80C and 80L of the Act ?"

2. We have heard Mr Akil Kureshi appearing on behalf of the revenue and Mr HM Talati appearing in Income-tax Reference Nos. 240 of 1993. In Income-tax Reference No. 152 and 158 of 1993 though notice is not received back, as the issue stands concluded in favour of the assessee, we have taken up these references for final disposal.

3. Mr Kureshi fairly pointed out that this Court in case of Commissioner of Income-tax vs. Deepak Family Trust No.1 and Ors., (1995) 211 ITR 575 has held that in case of trust the status has to be adopted as that of the individual and in light of the same the trust would be entitled to deduction under Section 80L of the Act. In the aforesaid decision in case of Deepak Family Trust, this Court has applied the ratio of the decision of the Apex Court in case of CWT vs. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust, (1977) 108 ITR 555. Our attention was also invited to the decision of this Court in case of M.L. Family Trust vs. State of Gujarat, (1995) 213 ITR 152 wherein the same view is taken while dealing with application for quashing complaint against the trust being prosecuted for offence relating to non-deduction of tax under Section 194A of the Act. It has been specifically held that the status of the trustees would be that of individual and Section 194A of the Act would not apply and there was no question of deduction of tax and hence the complaint was liable to be quashed.

4. In light of the aforesaid decisions, the questions referred to the Court in all the aforesaid references are answered in favour of the assessee and against the revenue.

The references are disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)
sundar/-